

MEMORANDUM

TO: NAPABA Board
FROM: Keaton Wong, Legal Intern, and Aleli Samson, Policy Director
DATE: June 20, 2007
RE: Comprehensive Immigration Reform and support for the Dodd Amendment

PURPOSE

To request board authorization to support the Dodd Amendment (No.1199) to the compromise immigration bill or similar legislation, consistent with NAPABA's recent advocacy for Asian Pacific Americans (APAs) and support for amendments to protect family-based immigration. The Dodd Amendment would:

- (1) Increase the proposed cap on the number of visas that can be issued annually to parents of U.S. citizens abroad;
- (2) Extend the amount of time visitor parents may remain in the U.S.; and
- (3) Confine overstay penalties to those actually guilty of overstaying their visits.

BACKGROUND

On June 4, the NAPABA Board voted to support the Menendez-Hagel Amendment to the compromise immigration bill, which proposed to extend the cutoff for legalization so that approximately 833,000 family members of U.S. citizens would not be left behind. On June 5, the NAPABA Board voted to support the Clinton-Mendendez-Hagel Amendment, which proposed to reclassify the spouses and minor children of legal permanent residents as "immediate relatives." Such a reclassification would have reduced their current five-year or longer wait to reunite with family members to approximately eight months.

Despite timely strategic calls to Senate offices by immigration rights advocates including NAPABA's staff, committees and affiliates, these family reunification amendments were defeated. (The Menendez-Hagel Amendment won 53 votes, constituting majority support, but due to a procedural tactic invoked by Sen. Kyl 60 votes were needed.) Such setbacks underscore the importance of advocacy for the family reunification amendments still pending. Voting on all remaining amendments, including the Dodd Amendment, is expected to begin on Friday, June 22. Due to the manner in which voting will be conducted (i.e., a long marathon session on amendment after amendment...), there will be little to no time for advocacy once voting begins on Friday.

Under current law, the parents of adult U.S. citizens are classified as "immediate relatives." As a result, there is no annual limit to the number of visas that can be issued to the parents of U.S. citizens. The compromise immigration bill, however, proposes to remove the parents of U.S. citizens from the "immediate relatives" classification and limit the number of parent visas that can be issued annually to 40,000. This represents less than half the average number of parent visas currently issued each year (90,000). Furthermore, the bill proposes to create a new parent visitor visa that would limit parents' stays to 30 days per year. Finally, if more than seven percent of visa holders from a given country overstay their U.S. visits within a period of two years, the bill would collectively penalize all nationals of those countries by barring their further entry into the U.S. or by terminating the visa program.

The Dodd Amendment would address the bill's inadequate consideration for family ties by increasing the annual cap on parent visas from 40,000 to 90,000, the current average number of parent visas issued by the U.S. each year. In addition, the Amendment would extend the annual stay for U.S. citizens' parents from 30 days to 180 days and make the visitor visa valid for three years. Finally, overstay penalties would be confined to those actually guilty of overstaying their U.S. visits, instead of being extended to all nationals who are seeking visas but are from countries with excessive overstay rates.

ANALYSIS

In 2005, five of the top ten countries receiving visas for parents of U.S. citizens were Asian countries.¹ Of the 60,566 parent visas issued by the U.S. in 2005, almost half (29,479) were granted to parents living in Asian countries. Thus if the proposed 40,000 cap on parent visas were imposed, and the proportion of parent visas for parents in Asian countries remained the same, approximately 19,469 law-abiding parents from Asian countries would be denied visas as a result of the proposed bill. In any case, without the Dodd Amendment, the bill's impact on APAs will be significant and negative.

Like the seemingly unjustified 40,000 cap on parents of U.S. citizens, the bill's proposed 30-day limit on stays of parents with visitor visas fails to give parental ties their due weight. Parents are not distant relatives but are vital members of the family unit and support system. Many parents provide free and trusted care of grandchildren, enabling their adult children to balance work and family. Immigrant parents also tend to contribute their labor and talents to small, family-owned businesses. Finally, the retention of immigrant parents in the U.S. benefits the American economy by keeping money earned in the U.S. spent in the U.S. The likely alternative would be for money earned in the U.S. to be sent overseas to family members such as parents left behind by the system.

In light of the foregoing, 30 days per year is an insufficient period of time to enable parents to partake in the lives of their children *significantly as parents*. Other, even more human, reasons for which parents visit their children in the U.S. can highlight the inadequacy of a 30-day allotment. For example, parents often visit to see newborn grandchildren in the U.S. for the first time and/or assist with the newborn's acute caretaking needs. Given bureaucratic realities such as imprecise federal government processing of visa requests and inherent unpredictability of human events such as when births actually occur, it is easy to see how a 30 day window would be woefully inadequate to meet real life needs.

In light of the importance of parents' ability to visit their children in the U.S., the bill's failure to specify how long parent visitor visas are valid must be addressed. The Dodd Amendment would ensure that parent visitor visas are valid for three years. Both the 180-day annual stay and three-year validity period are already accepted timeframes for other temporary visas. The current length of a tourist visa is 180 days, and H-1B visas are valid for three years.

Finally, as discussed above, the proposed bill would penalize all nationals who are seeking visas if they are from countries with a visa overstay rate exceeding seven percent. Specifically, further entry by these individuals into the U.S. would be barred or the visa program would be terminated. The Dodd Amendment proposes to strike the language that levels this punishment collectively and unfairly.

Critics of the Dodd Amendment have argued that immigrant parents burden taxpayers or the economy. However, as non-citizens, immigrant parents are generally ineligible for the majority of federal public benefits unless they earn these benefits through sufficient employment. Moreover, adult children petitioning for parent visas must sign affidavits of support and prove that they have adequate resources to support their parents.

¹ India-7,605; Philippines-5,429; People's Republic of China-5,106; Vietnam-2,382; Bangladesh-1,937.

Critics might also argue that the proposed bill is a product of a “Grand Compromise” that maintains a delicate balance between the interests of Democrats and Republicans, a balance that could be overburdened by too many amendments, thereby sacrificing the positive strides otherwise made by the bill. However, all of the pending amendments are a product of a more recent compromise: Senate Democrats and Republicans mutually agreed to a limited number of amendments on each side that would receive a vote—all in the name of passing a comprehensive immigration reform bill in the Senate. In this way, the compromise bill seems less precariously balanced and less vulnerable to being overburdened by amendments.

RECOMMENDATION

As an organization dedicated to promoting justice, equity, and opportunity to the Asian Pacific American community, NAPABA has been engaged and involved with immigrant rights for years. Consistent with such involvement and based on the foregoing, NAPABA is in an ideal position to support the Dodd Amendment and set action by NAPABA committees, affiliates, and the Coalition of Bar Associations of Color (CBAC) in motion. Hence, it is the staff’s recommendation that the Board adopt a position in support of the Dodd Amendment, or other similar legislation.